

**DEEPHAVEN CITY COUNCIL MEETING  
MONDAY, DECEMBER 2, 2019  
MINUTES**

1. **CALL MEETING TO ORDER:** Mayor Paul Skrede called the meeting to order at 7:00 p.m.

PRESENT: Mayor Paul Skrede, Councilmember's Melissa McNeill, Kent Carlson, Steve Erickson, and Tony Jewett

STAFF: Police Chief Cory Johnson, Zoning Coordinator Dale Cooney, and City Administrator Dana Young

2. **PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

3. **APPROVE CONSENT AGENDA**

Motion by Councilmember Erickson to approve the Consent Agenda, consisting of the following items:

- A. Approve November 18, 2018 Special & Regular Council minutes
- B. Approve December Verifieds
- C. Approve October 2019 Treasurer's Report
- D. Adopt Ordinance No. 04-67, Amending Sewer Rates
- E. Adopt Ordinance No. 04-68, Amending Storm Water Rates

Seconded by Councilmember McNeill. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

5. **PUBLIC HEARINGS**

- A. **Truth in Taxation**

City Administrator Young presented the proposed 2020 General Fund Budget revenues and expenditures. He said that the city is proposing a \$389,395 or 17.5% levy increase in 2020 to support General Fund activities, the Capital Improvement Fund, and the issuance of a Street Improvement bond. A PowerPoint presentation detailed 2020 General Fund revenues, expenses, a review of each General Fund Department budget, the Capital Improvement Fund, the impact of

the proposed sales tax exemption, the proposed tax levy of \$2,645,683 and the property tax impact of the 2019 Budget.

Hearing no further comments, Mayor Skrede closed the public hearing at 7:32 p.m.

**B. Adopt Resolution No. 39-19, Adopting the Final 2020 Tax Levy**

Motion by Councilmember Erickson to adopt Resolution No.39-19, A Resolution Adopting the Final 2019 Levy, Collectible in 2020 in the amount of \$2,645,683. Seconded by Councilmember McNeill. Motion carried 5-0.

**C. Adopt Resolution No. 40-19, Adopting the 2020 Budget**

Motion by Councilmember Erickson to adopt Resolution No. 40-19, A Resolution Adopting the 2020 Budget in the amount of \$5,323,400 in expenditures and \$5,384,909 in revenues. Seconded by Councilmember McNeill. Motion carried 5-0.

**6. PLANNING & ZONING REQUESTS**

**A. Consider the conditional use permit request of Lake Minnetonka Care Center to expand the legal nonconforming use of the property as a nursing home at 20395 Summerville Road**

Cooney presented the staff report. Cooney said the Lake Minnetonka Care Center (LMCC) operates a nursing home at 20395 Summerville Road which has been in continuous operation since at least 1958 and that the LMCC has made application to build a new building on the property. He said the existing building is substandard under current nursing home regulations (Minnesota Rules Chapter 4658 Department of Health Nursing Homes), and the applicant proposes to construct a new building on the property to meet those standards. Cooney said the new building would have a 7,570 square foot footprint with a total square footage of 14,954.

Cooney said the use of the property as a nursing home is not a permitted use within the district. He said that since the use of the property predates the zoning ordinance, the use is granted legal nonconforming status under state law and can remain in operation at its current location. He said that with few exceptions state law prohibits the amortization of a legal nonconforming use.

Cooney said that, per Minnesota Statute 462.357 Subd. 1e, legal nonconformities, including the lawful use or occupation of land or premises existing at the time of an amendment to the zoning ordinance, may be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion.

Cooney noted that state law does mandate several uses that must be allowed within single-family residential zoning districts but the proposed facility does not fall into one those listed categories.

Cooney said it is the opinion of the City Attorney that a nonconforming use cannot be expanded without somehow providing a mechanism for expanding that use. He said while a variance may

be granted for the spatial requirements of the property (building footprint, impervious area, etc.); it is not an appropriate tool for expanding the nonconforming use of the property. Cooney noted that, even if the proposed expansion of the nursing home did not exceed zoning district requirements in any way, some mechanism would be needed to permit any expansion of the nonconforming use of the property.

Cooney said that in the opinion of the City Attorney, the only mechanism to allow the expansion of the LMCC on the property to any extent is via a Conditional Use Permit (CUP). He said city code Section 1305.01 requires that all uses of land must be made in conformity with Section 1305, and allows by CUP uses that are not enumerated within Section 1305. He said per city code Section 1320.01, the city code gives flexibility to grant a CUP to additional uses not specifically designated within the zoning code. He said a CUP would specify the conditions and extent to which the use could operate on the property and that the CUP would be tied to the property and could be transferred to future owners. Cooney noted that the City Attorney has stated that the CUP is only intended to be the mechanism that would allow the nonconforming use to expand, and that the issuance of the CUP in no way makes the use a conforming use. He said that further expansions of the facility or discontinuance of the facility would still be viewed via the laws regulating legal nonconformities.

Cooney read from Section 1320.03 of the city code which states, *“Evidence. In considering a request for a Conditional Use permit, the Council must be supplied with and consider evidence of the effect of the proposed use on the plan for development of the community; the character and development of the neighborhood; the health, safety, and welfare of occupants of surrounding lands; existing and anticipated traffic conditions, including parking facilities, on adjacent streets; and the effect on property values of the subject premises and in the surrounding area.”*

Cooney said that the existing facility serves 21 residents and that the facility has been in continuous operation since at least 1958. He said he spoke with Bob Dahle, the Program Director of Engineering Services at the Minnesota Department of Health, who confirmed that the facility has served at least 18 residents since 1960 and would have been set at its current number of residents since at least 1985.

Cooney said the current footprint of the existing building, garage, and deck is 3,948 square feet. He said that while the number of residents will remain the same, the new building would have a 7,570 square foot footprint. Cooney noted that Mr. Dahle confirmed that the age of the existing building (1910) would make it cost-prohibitive to retrofit and that it may not even be possible to do so.

Cooney said that the square footage of the proposed building is driven, to a certain extent, by state requirements. He said that, for example, 8-foot-wide hallways are a state and federal requirement. He said that minimum room square footage, toilets, dining rooms, day rooms, activity rooms all have minimum square footage requirements. He stated that waivers may be granted for certain aspects of a facility, but it would depend on the specific circumstances. Cooney stated that Mr. Dahle pointed out that the minimum space requirements required by regulations are already quite small.

Cooney listed some of the relevant nursing home minimum size standards. He said that he acknowledges that the minimum sizes are quite small, but that the proposed building exceeds minimum standards in several ways:

- All bedrooms are single occupancy, while regulations require that only 5% of the rooms be single occupancy. The remainder may be double occupancy.
- All bedrooms have their own toilet, while regulations state that a toilet may be shared by up to 4 beds.
- Proposed single occupancy rooms are a minimum of 131 square feet and a maximum of 161 square feet. So, at least some rooms exceed minimum standards.
- Staff estimates that the total area set aside for dining, dayroom, and activities are 48 square feet per bed, with a minimum of five square feet per bed for each type of area. (Minimum required is 840 sf; proposed is approximately 1008.)

Cooney said that he does not begrudge the applicant from requesting beyond the minimum requirements for the residents, but notes the above only to point out that the building could, in theory, be smaller.

Cooney said that some of the first complaints staff received from residents for the proposal were related to public safety. He said that, Per Section 1320.03, in considering a request for a Conditional Use permit, the city must consider evidence related to “*the health, safety, and welfare of occupants of surrounding lands.*” He said that he asked Police Chief Cory Johnson to put together a public safety memo to detail their interactions with the LMCC’s residents and the impacts on the community.

Cooney said the footprint of the existing building would be nearly double (92% larger) and exceed the maximum allowable structure footprint size allowed by the zoning code by 68%. He said that there is no doubt that the existing building is substandard by current nursing home standards, and that the new building would better serve the occupants of the building. He said he recognizes that the space that exceeds minimum state nursing home standards will only serve to further enhance the well-being of the residents of the Lake Minnetonka Care Center. He said that he also recognizes that market conditions play a role in providing care above minimum standards and that a new facility may require greater amenities coupled with higher fees simply to make the project financially viable.

But, Cooney said, there is nothing within Section 1320.03 for CUP evidence consideration that allows the city to take those advantages to the occupants of the building into consideration. He said the factors for consideration are only how the building would impact the community, the character of the neighborhood, and other primarily external impacts to the community. He said that, when considering those factors, staff can only conclude that the change from a well-integrated retrofitted large house, to a more institutionally sized (albeit newer) building would have a negative impact on the residential character of the neighborhood. Cooney said that it may be the reality that any facility that best meets the needs of the residents would be at odds with a building that integrates appropriately within the residential character of the community. He said that whether or not those two goals are mutually exclusive is debatable, but in the opinion of staff the institutional scale, multifamily character, and commercial nature of the proposed facility

is incongruous with the existing single-family residential character of the surrounding community.

Cooney said that he recommends denial of the Conditional Use Permit request of the Lake Minnetonka Care Center to expand to expand the legal nonconforming use of the property as a nursing home in conjunction with a new building and parking lot at 20395 Summerville Road, as proposed based on the following findings:

A. The effect of the proposed use on the plan for development of the community:  
The proposed use will have no effect on the plan for development of the community. The surrounding community is fully-developed with single-family residential properties, and the proposed use will not have an impact the nature of that development.

B. The effect of the proposed use on the character and development of the neighborhood:  
The change from a well-integrated retrofitted large house, to a more institutionally sized building would have a negative impact on the residential character of the neighborhood. It is easy to overlook the use of the current building due to the inconspicuous nature of the building and its residential character. It will be very obvious once the new facility is constructed that it is a commercial/multifamily residential operation. Summerville Road is a relatively small residential street within Deephaven and has only 21 total properties, and the amount of impact will be disproportionate to the residents of the street.

C. The effect of the proposed use on the health, safety, and welfare of occupants of surrounding lands:  
Since the quantity of residents is not changing, nor is the proposed staffing levels, staff does not expect any *changes* to the health, safety, and welfare of occupants of surrounding lands. But there are existing public safety concerns for the property raised by residents and the Deephaven Police Department. The conditions are not expected change based upon the proposed use, but it is reasonable to consider existing health, safety, and welfare impacts.

D. The effect of the proposed use on existing and anticipated traffic conditions, including parking facilities, on adjacent streets:  
Since the quantity of residents is not changing, nor is the proposed staffing levels, staff does not expect any changes to anticipated traffic conditions, including parking facilities, on adjacent streets.

E. The effect of the proposed use on property values of the subject premises and in the surrounding area:  
The city assessor reviewed the proposal and concluded that the changes would have a neutral impact on surrounding property values. He said that replacing the old, existing building would have a net positive impact but that the scale of the new building would have a net negative impact and that taken together the proposal would be neutral for surrounding property values.

Cooney said that the Planning Commission held a public hearing at their November 19 meeting and on a 6-0 vote recommended denial of the request based on the recommendation and findings of staff.

Cooney concluded his staff report.

Jeff Sprinkel, applicant, administrator, and owner of the Lake Minnetonka Care Center, said that he is here to answer any questions.

Mayor Skrede asked why the request is being proposed now after all of this time.

Sprinkel said that there are some state funding changes that make the timing more advantageous. He said that his goal has been to build a building on the current site. He said that there have been 3 informal meetings and a Planning Commission meeting at which the neighborhood has made clear that they are not in favor of building a new building on-site. He said that the size of the building has been an obstacle. Sprinkel said selling the property is also a consideration. He said that he would like to see a win-win situation for everyone since he would like to have a larger and better building for his residents but also meet the need of the neighborhood. Sprinkel said that the city does not allow nursing homes in the city. He said that moving is more difficult, but it is an option.

Mayor Skrede introduced the City Attorney Jay Lindgren.

Councilmember McNeill asked about waivers for the building. Sprinkel said that there is a room sized waiver that is renewed every year. He said that there is also a fire safety inspection. McNeill asked if the bathroom to resident size ratio is a waiver. Sprinkel said that is just a grandfathered condition.

Councilmember Jewett asked about the Minnesota Department of Health application and how the competitive nature of it as it relates to single-occupancy rooms. Sprinkel said that the state sets the rates for Nursing Homes that take Medical Assistance. He said that the RFP application process at MDH would like to see single rooms with private bathrooms. Sprinkel said that it would be much more difficult to get funding without single rooms.

Councilmember Carlson asked if the operating costs versus what the state thinks the operating costs should be is how this would be reviewed. Sprinkel said that is a factor in the review process, but also the building and safety issues. Sprinkel said the new building would be up to current fire code standards.

Sprinkel said that the further he has to move his building, the less likely his chances are to get funding since the state does not want nursing homes to compete with each other geographically. He asked if he moved within Deephaven, what kind of approval process would be necessary.

City Attorney Lindgren said that the CUP process is created by the existing nonconforming circumstances, but that a PUD (Planned Unit Development) process would be the appropriate process for relocating to a new lot.

Mayor Skrede asked about a lot size parameter for a PUD. Lindgren said that a PUD typically is a larger land use area, but that the city code does not have a minimum lot size. He said that the

purpose of the PUD is as an overlay that takes into consideration the underlying zoning as well as the proposed use. Mayor Skrede asked if the PUD would be subject to public hearings and public notice. Lindgren said yes since is it essentially a rezoning of a property. Mayor Skrede asked if a PUD could be considered spot zoning. Lindgren said that the PUD process is a way to have flexible zoning without spot zoning, and that the PUD has to be consistent with the underlying zoning.

Mayor Skrede asked the applicant if it matters if a property is residential or commercial. Dave TeBrake, architect for the applicant, said that it does not matter to the state, but that Nursing Homes are more common in residential areas.

Councilmember McNeill asked if Deephaven Woods has a skilled nursing facility. Sprinkel said that they are not. TeBrake said that they have housing with services license.

Sprinkel asked about having his current property rezoned into the four lots that it is currently made up of, which is similar to the size of adjacent lots. Cooney said that how the property was originally platted is not relevant. Since it is currently a single lot, it would have to be subdivided based on current zoning standards which is a 20,000 square foot lot minimum. Sprinkel asked if that means it could not be subdivided. Cooney said that it would require a variance for a smaller lot size.

Councilmember Carlson asked about controls that the city could put on a PUD. Lindgren said that findings in the PUD would outline how the application meets city standards, but that a development agreement would also be a component of the process.

Sprinkel said that he would like to withdraw the application for the CUP and the variance request. Mayor Skrede said he would need that in writing. Sprinkel said he would do that.

**B. Consider the variance requests of Lake Minnetonka Care Center to exceed the maximum permitted grade alteration, exceed the maximum permitted impervious surface area, and exceed the maximum allowable structural footprint in conjunction with the construction of a new building at 20395 Summerville Road**

Jeff Sprinkel, applicant, withdrew the variance application for this request.

**C. Consider the variance requests of Michael and Kris Hickey to exceed the maximum permitted grade alteration in order to construct a new house on the property at 3216 Robinsons Bay Road**

Cooney said the property owners have applied for a variance to exceed the maximum permitted grade alteration in order to construct a new house on the property the property at 3216 Robinsons Bay Road. Cooney stated that the builder for the applicant would like to ask to have the item tabled and heard at the January 6, 2020 City Council meeting.

Sven Gustafson of Stonewood Builders, builder for the applicant, said that they received last minute questions from the city engineer and that they need to supply more information and would like to table the request to a future meeting.

Mayor Skrede asked if this had been tabled already. Gustafson said that they withdrew the application previously. He said that they have made significant changes to the application, but that there are still significant questions remaining.

Mayor Skrede said a withdrawal should allow them the time to get the information needed. Cooney said that it takes the city out of its 60-day review requirement and reboots the process for a public hearing. Cooney said it is the city preference on how to proceed but that he did have concerns, if the project were tabled, about the 120-day time limit for the project.

Lindgren said that there needs to be a written extension request and that request could specify a date or have an open-ended timeline.

Gustafson said that they don't plan on making changes to the application, just discussing the outstanding questions with the city engineer.

Mayor Skrede said that he doesn't know if this request for additional time is from the owner, or from the builder who hasn't put together the required information. He asked if the property owner was here. Gustafson said that they are not since he did not intend that the application would be heard tonight.

Mayor Skrede said that he wants to be respectful of the neighborhood residents' time that have to show up for multiple meetings. He said that the neighbors are supportive of the neighbor, but concerned about inability of the applicants' hired representatives to put together an adequate application. Mayor Skrede said that he does not know how much leniency he is willing to grant. He said that he was at the Planning Commission meeting and heard similar excuses about not having time to provide the information.

Gustafson said that they are not changing the application, but just need to provide more information. He said that they provided the information last Tuesday, but did not receive a response until today.

Councilmember Carlson asked if they are given additional time, will they have a watershed district permit. Gustafson said they hope to. Councilmember Carlson asked if they had met with the watershed staff. Gustafson said no.

Mayor Skrede said that he has been on the council for 15 years and has not seen an applicant need a third time through the process. Mayor Skrede said that he is not in favor of tabling the issue and that he thinks the neighbors' time has been abused.

Gustafson said that they have had 3 meetings with the neighbors to create an application that they will have confidence in.

Councilmember Erickson said that the Planning Commission asked for the information and information is still not ready. He said that they would need to withdraw the application or the City Council should deny the application.

Councilmember Carlson said that he has concerns about what the watershed district will say about this. He said that they are bringing in significant fill, lifting the property, and building a significant retaining wall. He said that they are negatively impacting the neighboring property owners. Councilmember Carlson said that he is not an engineer and doesn't know if they can make this work or not, but he does not have the information to know.

Councilmember Erickson said that working with the watershed district is required homework. He said that even if the city approved it, the watershed district would say no. He said it is useless to discuss this until the watershed district has signed off on it. He said that he is not supportive.

Councilmember Carlson said that the proposal alters the essential character of the neighborhood. He said that this is beyond what he would be comfortable with.

Councilmember McNeill asked how long the city engineer had to review this information. Gustafson said since last Tuesday. Cooney said it was 5:54 p.m. on Tuesday before Thanksgiving, so a day and a half of office hours.

Gustafson said that the property is tricky and they are trying to address new issues as they come up. He said that he thinks the stormwater and floodplain are secondary to the overall request.

Mayor Skrede said that he doesn't support an extension and that fine tuning the grading is useless until the watershed district looks at it. Gustafson said that this is the first time the watershed district was mentioned by the city engineer. Mayor Skrede said this should not be the first time that they realized that the watershed district might have an interest in a floodplain issue on Robinsons Bay Road. Cooney said that this is not the first time the floodplain issue has been mentioned.

Councilmember Erickson motioned to deny the variance application. Gustafson withdrew the variance application.

Mayor Skrede said that he would accept the withdrawal but not an extension. He said that next time he would like to see that the watershed district be involved, address the concerns of the neighbors, see something in writing from the property owners, and a meeting with the city engineer. He said that an estimated 250 truckloads of dirt coming down Robinsons Bay Road will be a problem for that private road and that he would not have that kind of activity during spring road restrictions.

Councilmember Jewett asked about when the 60-day deadline starts. Lindgren said that the deadline starts when the application is deemed complete. Councilmember Jewett said that if the Planning Commission denies a request, but the City Council doesn't act it would be approved. Lindgren said yes, unless it is withdrawn in writing.

**D. Consider the variance requests of Cory and Heather Lepper to encroach into the lake yard setback, encroach into the front yard setback, encroach into the north and south side yard setbacks, and exceed the maximum permitted impervious surface area in conjunction with the construction of a new house at 20580 Summerville Road**

Cooney presented the staff report. He said that the property owners are building a new house on the property. Cooney said the design of the house is such that there are proposed encroachments into all yard setbacks and that the applicant is also seeking variances for impervious surface area. Cooney noted that the existing legal nonconforming property is highly nonconforming for lake yard setback and impervious surface area. He said the property is 14,241 square foot R-3 property.

Cooney said that Section 1302.05(3) of the city ordinance requires a minimum lake yard setback of 100 feet from the OHW. He noted that the proposed pool is as close as 66.3 feet from the OHW. He said that some modifications were made to the plan based on a lot line dispute and the proposed house was moved 10 feet closer to the lake such that the closest encroachment is 70.9 feet from the lake. He stated the existing house on the property has a closest encroachment of 49.2 feet, with a deck that is approximately 28 feet from the OHW. Cooney said that the Planning Commission did not review this most recent iteration of the plan.

Cooney said that Section 1302.05(3) of the city ordinance requires a minimum front yard setback of 35 feet and the closest encroachment of the revised proposed house is 11 feet from the disputed front yard setback.

He said that the property has a depth of 198.5 feet and subtracting the required setbacks leaves a buildable area of 63.5 feet. Cooney said he thinks the buildable area is too shallow to allow for a house with an attached garage and that some degree of variance seems justified in this case. He said that, given the substantial improvements to the proposed setbacks from existing conditions in the lake yard and the long street end of Summerville Road leading into the property, staff is supportive of this aspect of the request.

Regarding the side yard setbacks, Cooney said that Section 1302.05(3) of the city ordinance requires total combined side yard setbacks of 25 feet with a minimum side yard setback of 10 feet. He said that the applicant is proposing a south side yard setback of 8.5 feet and north side yard setback of 9.9 feet and is seeking a variance of 1.5 feet from the south side yard setback, and 5.1 feet from the north side yard setback. Cooney said that the existing setbacks are 14.5 on the north side and 2.5 on the south side, and the proposed combined setbacks are a slight improvement from existing conditions.

Cooney noted that the south side yard encroachment for the house is due to the proposed cantilever; otherwise this setback would be conforming. He said that while this setback is a significant improvement from existing conditions, it would still be his recommendation to eliminate the cantilever in order to avoid this variance.

Cooney said that the applicant is requesting flexibility from the north side yard setback due to the property being adjacent to a 10-foot-wide city fire lane at the end of Summerville Road. He said that he has no objection to this as a general concept in providing flexibility for an otherwise limited lot; he said that struggles with the idea of a side yard setback variance for a new house on a 70-foot-wide lot. He said that there are many challenging 50-foot-wide lots within the city, and this seems like an avoidable variance. He said that the lot width is substantial enough to support a generous home without the need for a variance and the fire lane situation would be simply an allowance to build a wider house.

Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said the applicant is proposing an impervious surface area of 41.6% and is seeking a variance to exceed the maximum impervious surface area by 16.6%. Cooney noted that, currently, the property is at 44.2% impervious area.

He said that, as a 14,241 square foot lot, it is not necessarily a small lot. He noted that a zoning code compliant 20,000 square foot R-3 lot is allowed 5,000 square feet of impervious surface area. He said that if 20580 Summerville were given the full 5,000 allotment of impervious area, the impervious percentage for the property would be 35.1%. He noted that one contributing factor for the excess impervious surface area is that the low elevations of the property do not support a full basement and some components of the house need to be hosted above grade, which drives up the building footprint area.

Cooney acknowledged that all variances are unique, but in 2016 the city did grant a comparable impervious surface area for a comparably sized property at 20200 Lakeview Avenue. He said that the property is a 15,019 square foot lot with existing conditions at the time of 48.8% impervious. He said that the applicant was granted impervious surface area variance of 41.2%. Cooney noted that one mitigating factor in that request was a 1,136 square foot existing lake yard deck, but he noted that property was able to support a basement. Cooney said that in 2016, the city also granted an impervious surface variance of 29.45% for the 32,699 square foot R-2 property at 20760 Linwood Road, partially due to the fact that the low elevations on the property were not conducive to building a basement.

Cooney said that a portion of the property's stormwater will be directed to the mitigation system under the driveway and that a portion of the property's stormwater is proposed to be connected to the city storm sewer that leads toward the lake. He said that the city would need to approve this connection. Cooney said that the storm sewer along the fire lane is being upgraded next year to an 18-inch diameter pipe and that the culvert under Summerville Road is being upsized from a 10 inch pipe to a 12 inch pipe.

Cooney said that the city engineer did have questions related to how the overflow is handled. If the street culverts are blocked there is no way for the excess water to get to the lake and that ponding in the street or neighboring properties is a possibility. Cooney noted the engineer's concern that the water is being pushed to the street without a clear path to the lake if the culverts become blocked. Cooney said that the applicant's engineer provided some additional written information on this issue.

Cooney said that the applicant is proposing to install a number of items within the public right-of-way including portions of a paver driveway, trench drains, and a hard connection to the city storm sewer that leads to the lake. He said that an agreement waiving the city from any liability for damage from these improvements would be required. Cooney said the city would need to review and approve the agreement prior to the start of construction.

Cooney said that he is generally supportive of the lake setback, and front setback variance requests. He said that the property seems wide enough to support a new house without variances and the presence of the fire lane does not alter that fact, nor should it serve as a windfall for the property owner build a wider house.

He said that he struggles with the degree of the impervious surface area request, since the request is substantially over the 25% limitation. He said that since the low elevation for the property prevents a full basement from being built on the property, the above grade areas of the house must support those components. Cooney said that taking the existing impervious conditions, low elevation, and substandard lot size into account, staff sees sufficient justification for supporting the impervious surface request as proposed.

Cooney said that he recommends denial of the variance requests to encroach into the south side yard setback by 1.5 feet for the and encroach into the north side yard setback by 5.1 feet for the proposed house on the property at 20580 Summerville Road, as proposed, based on the following findings:

Is the variance in harmony with the purpose and intent of the ordinance?

No. The purpose and intent of the ordinance is to allow the orderly development and redevelopment of property within the city and when the ordinance standards cannot be met, it outlines the procedures to vary from these standards. In this case, the property is wide enough to support conforming setbacks without the need for a variance.

Is the variance consistent with the comprehensive plan?

No. The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourages housing that respects the natural environment of the community and maintains or exceeds Department of Natural Resources shoreline standards.

Does the proposal put property to use in a reasonable manner?

No. The width of the house is not reasonable given the already generous lot width.

Are there unique circumstances to the property not created by the landowner?

No. At 70 feet in width, the property is wide enough to support a 45-foot-wide house without a variance. The presence of the adjacent fire lane does not alter that fact (and might only come into play as a mitigating circumstance for a lot that did have unique circumstances).

Will the variance, if granted, alter the essential character of the locality?

No. The proposal is an improvement for the property to the south and, due to the fire lane and location of the property, would be largely be unnoticed by neighbors.

Cooney said that he recommends approval of the variance requests to encroach into the lake yard setback by 33.7 feet, encroach into the front yard setback by 24.2 feet, encroach into the south side yard setback by 7 feet for the proposed retaining wall, and exceed the maximum permitted impervious surface area by 16.6% as proposed.

The recommendation is conditioned that:

- The applicant provides an agreement, subject to the city's review and approval, waiving the city from any liability for damage to the applicant's right-of-way improvements
- The applicants complete the stormwater management improvements to meet the requirements and specifications of the city engineer.
- The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

He said that his recommendation is based on the following findings:

Is the variance in harmony with the purpose and intent of the ordinance?

Yes. The purpose and intent of the ordinance is to allow the orderly development and redevelopment of property within the city and when the ordinance standards cannot be met, it outlines the procedures to vary from these standards. The lot depth only allows for 63.5 feet of buildable area, which is insufficient for a modern house. The purpose and intent of the grading restrictions is to prevent grading changes that circumvent the house height limitations or alter the overall drainage patterns in a significant or detrimental way, neither of which is the case for this proposal.

Is the variance consistent with the comprehensive plan?

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourages safe, healthy and quality housing that respects the natural environment of the community.

Does the proposal put property to use in a reasonable manner?

Yes. Aspects of the request put the property to use in a reasonable manner. The grading is a reasonable response to the low elevations of the property and the surrounding properties. The impervious areas are slight reductions from existing conditions with significant mitigation provided. The lake yard and front yard setbacks are reasonable given the shallow lot depth, existing conditions, and long street end at Summerville Road.

Are there unique circumstances to the property not created by the landowner?

Yes. The property only has a buildable lot depth of 63.5 feet which is insufficient for a modern house. Additionally, there is a long access in the public right of way at the front of the property where Summerville Road splits into three separate driveways. The proposal is an improvement from the setback conditions on the lake side of the property. Regarding the impervious surface area, the proposal is a reduction from existing impervious conditions. The property is 71% of the minimum lot size. Also, the property sits low elevation which does not support a basement, so typical basement components need to be hosted on the main and second levels of the house. Regarding grading, the property is low and flat and the applicant is attempting to create positive

drainage off of the property while also attempting to raise the elevation to be more consistent to the neighboring property to the north.

Will the variance, if granted, alter the essential character of the locality?

No. The proposal would not alter the essential character of the locality. The proposal is similar in scope and scale to other properties within the community.

Cooney said that the Planning Commission held a public hearing at their November 19, 2019 meeting and on a 4-2 vote (with Studer and Wilcox voting against) recommended approval of the request as proposed based on the findings for approval of staff, and the conditions of staff, and with the following additional conditions:

- The proposed pool be removed from the proposal (which would change the maximum lake yard encroachment to 18.2 feet, and reduce the impervious surface percentage to 37.2%).
- The applicants coordinate the final design of the stormwater mitigation and grading with the City of Deephaven to ensure that the project adequately provides surface overflows to minimize flooding potential and works in conjunction with the improvements for Summerville Road and the city fire lane.

Cooney concluded his staff report.

Councilmember Jewett asked about Planning Commissioner Studer and Wilcox's dissenting votes. Cooney said that they dissented because they were supportive of the pool but the motion was that the pool be removed.

Councilmember McNeill asked about the new plan setbacks. Cooney said that the survey shows the setbacks but that the new house would be 22 feet off of the originally proposed front property line.

David McCulloch, 20595 Summerville Road, said that the property has been surveyed several times and that you can see the stakes from the 1968 platting in the survey. He said that he would like to resolve the situation before a decision would be made.

Mayor Skrede said that the property owners met and agreed on the issue and asked if both would be comfortable codifying the agreement. McCulloch and Lepper agreed.

McCulloch mentioned the water issues in the area that he has concerns about. Mayor Skrede said that he is aware of the issues and it working to help fix them with the drainage improvements on in the fire lane, but that he would also like to discuss the issue on his property with him at some point.

Lindgren said that, regardless of what the property owners agree are the property lines, that does not actually establish what the property line is. He said that is a private property issue. Lindgren said that the city's issue is does it have enough information to make a determination on the request. He said that the city does not have the ability or authority to establish the property line.

Mayor Skrede asked Lindgren if the city could authorize the variance based upon agreed upon property markers. Lindgren said that is fine for city purposes in determining the variances, but does not resolve the ultimate property line issue.

Councilmember Erickson said that the applicant is proposing the setbacks from the worst-case-scenario on the property dispute such that there would not be impacts if this was ultimately determined to be the front property line.

Cooney asked about attaching the survey to the resolution. Mayor Skrede said that the resolution would note the setbacks from property markers, and not the “front lot line”.

Lindgren said that it would work so long as the city is measuring from a specific point.

Councilmember Erickson said he was comfortable with the proposal since it is using the most restrictive points as the baseline.

Cooney asked if the measurements are from the points, or from the line created by the points. Lindgren said that he would like a legal description.

Councilmember Jewett asked how the city would approve the connection to the storm sewer. Cooney said that the City Council can approve the connection and then have public works state their connection requirements.

Mayor Skrede asked about the council feels about the revised proposal.

Councilmember Erickson asked about where the revised house sits. Lepper discussed the measurements with Erickson by viewing the survey shown on the TV monitor.

Councilmember McNeill said that the Planning Commission was most concerned with the lake yard setback.

McCulloch asked about blocking neighbor views by having a house set closer to the lake. Skrede said that is not a code requirement, but rather a guideline. He said that the angle of the lakeshore also is a factor.

Heather Lepper, applicant, said that their intention was to maintain the new house sightlines.

Mayor Skrede confirmed that the closest encroachment for the screened porch was 70.9 feet. Cooney said that was correct.

Cory Lepper, applicant, said that they moved the pool back to adjust to the repositioned changes. Mayor Skrede confirmed that the pool setback was 66.3 feet. Cory Leper said that is correct.

Councilmember Erickson said that it is a significant improvement. Councilmember Carlson said that he likes the way it lines up with the adjoining properties.

Mayor Skrede said that the Planning Commission had an issue with the pool, but that there are no sightline issues. He said that there is more improvement with this application than he had originally thought.

Councilmember Jewett said that individually the variances are better than what is there.

Councilmember McNeill said that she thinks it is a great design, but that she struggles with the number of variances for a new house.

Councilmember Carlson asked about mitigation. Lepper said that they are doing significant mitigation that would collect all of the impervious area on the property.

Motion by Councilmember Carlson to recommend approval of the request as presented based on the findings and conditions of the Planning Commission and based off of the updated survey dated 11-18-2019 showing the relocated house and disputed property pins. Councilmember Carlson added the additional conditions that the applicant shall provide language for the property pins that the setbacks are based off of, and that the survey shall be attached to the resolution.

Motion was seconded by Councilmember Erickson. Motion carried 4 to 1 with Councilmember McNeill voting against.

Mayor Skrede said that he appreciates the cooperative nature of the neighbors. He said that he appreciates the input of the Planning Commission and that the deviation from their recommendation is largely based on new information presented by the applicants.

Cindy Pratt of 20590 Park Placed asked about the variance precedent for the grading. Lepper Confirmed that 2 feet is not a variance. Mayor Skrede said that the variances are taken individually. Pratt said that she is worried about the low area filling up that might push water onto her property. Councilmember Erickson said that some of the issues will be solved with the city improvements to the fire lane.

#### **E. Approve Comprehensive Plan Revisions**

Cooney said that the City of Deephaven submitted its draft 2040 Comprehensive Plan to the Metropolitan Council in December of 2018. He said that on June 13, 2019 the city received a second Incomplete for Review letter requesting additional information. Cooney said that, in response, city staff and the city engineer have provided the attached changes.

Cooney said that he worked with Metropolitan Council staff and determined that revising household and population projections for the comprehensive plan might be the best way to move forward. He said that he was initially resistant to this idea due to the potential that this would create additional comp plan requirements but that Metropolitan Council staff worked with city staff to build realistic projections for the city.

Cooney said that the revised projections are beneficial for the city in several ways:

- They more accurately reflect existing conditions. The 2010 numbers did not include Deephaven Woods, while the new numbers do. This also means, using the 2017 estimates, less household growth needs to be accounted for in the Comprehensive Planning Process.
- Projected growth can now be more accurately accounted for via subdivisions and infill development only. As Deephaven is a built-out city, based on current zoning there are no other drivers of household growth.
- The new projections eliminate the city’s projected affordable housing need. This was always going to be a contentious issue with the Metropolitan Council. However, lower growth forecasts eliminate the affordable housing requirement.

Cooney concluded his staff report.

Mayor Skrede said that he likes the changes and is supportive of the more meaningful population numbers. Councilmember Carlson agreed.

Councilmember Jewett noted some typos in the document that should be corrected.

The Council expressed support of the changes.

**7. UNFINISHED BUSINESS**

**A. Other**

There was no Unfinished Business this evening.

**8. NEW BUSINESS**

**A. Discuss Appeals from 90-Day Rule**

The Council postponed action on this item until the December 16<sup>th</sup> meeting.

**B. Discuss Alternate Dates for 2020 Council Meetings**

Administrator Young stated that there are three regularly scheduled Council meetings in 2020 that conflict with a major holiday and two meetings that conflict with election preparations. These five regularly scheduled Council meetings have been rescheduled to the following dates:

Original Date	Event	Alternate Date
Monday, January 20, 2020	Martin Luther Kind Day	Cancelled
Monday, February 17, 2020	President’s Day	Cancelled
Monday, March 2, 2020	Election Preparations	Thursday, March 5, 2020
Monday, September 7, 2020	Labor Day	Tuesday, September 8, 2020
Monday, November 2, 2020	Election Preparations	Thursday, November 5, 2020

Motion by Councilmember Carlson to approve the alternate dates for the rescheduled 2020 Council meetings. Seconded by Councilmember Jewett. Motion carried 5-0.

**C. Other**

There was no other New Business this evening.

**9. DEPARTMENT REPORTS**

**A. Police Department**

Chief Johnson provided a summary of the November Police Incident Report for Council review.

**B. Excelsior Fire District**

Councilmember Erickson stated that there was nothing new to report on the Excelsior Fire District.

**C. Public Works**

Administrator Young provided an update on recent and upcoming public work activities.

**D. Administration**

Administrator Young provided a brief summary on the following items:

- Required reports and publications
- January Newsletter
- The annual Holiday party will be held on Thursday, December 19<sup>th</sup>
- Our auditing firm of BerganKDV is proposing a 7% increase in their annual auditing fees for the 2019 audit. Their fee for the 2018 audit was \$24,475 and their proposed fee for conducting the audit of Deephaven's 2019 financial statements is \$26,200. Steve Wischmann of BerganKDV stated that pension standards and lease implementation standards have added to the normal 3-4% increase this year and in the future.
- Steve Tallen, the City's Prosecuting Attorney, is considering retiring in 2024 and has proposed a 4-year contract with the City of Deephaven with some fairly attractive rates. He is offering a 0% increase in 2020, 1% increase in 2021, 2% increase in 2022 and a 1% increase in 2023.
- An overview of the activities of the Metropolitan Mosquito Control District within the City of Deephaven

Motion by Councilmember Jewett to approve a 4-year contract with City Prosecutor Steve Tallen with contract increases of 0% increase in 2020, 1% increase in 2021, 2% increase in 2022 and a 1% increase in 2023. Seconded by Councilmember Erickson. Motion carried 5-0.

**10. ADJOURNMENT**

Motion to adjourn by Councilmember Carlson, seconded by Councilmember McNeill. Motion carried 5-0. The meeting adjourned at 10:00 p.m.

Respectfully submitted,  
Dana H. Young, City Administrator